AI In the Law: Friend or Foe?

Helping Lawyers through the Growing Pains of a New Reality

A veteran lawyer and young practitioner will demystify artificial intelligence, or "AI," and offer guidance to practicing lawyers now standing at the crossroads of a new legal landscape. Aside from its "other worldliness," AI offers transformative potential but with real world ramifications, ethical quandaries and legal pitfalls. The program will look at practical applications (e.g., ChatGPT, Clearview AI, and DALL e) and current case studies that offer nascent guidance, from the Levidow firm case (ChatGPT used to cite cases) to the social and ethical implications of racially-biased facial recognition software, to IP uses. Join us for a look into the present and future of AI and the Law.

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Introduction

Over the last 40 years, the practice of law and the tools legal practitioners use have evolved and advanced on many levels. Yes, some of us remember dictating letters and memoranda, the use of whiteout to make corrections, sitting for hours doing research with physical, hardcover books, etc. The new generation of lawyers have no concept, nor do they understand the historical context in which seasoned lawyers view new technology, particularly the use of Artificial Intelligence (AI). To many, it feels less of an evolution and more of a revolution.

The newer generation of lawyers are far more accepting of change and understand the importance of harnessing technology for competitive advantage. There has rarely been a topic in the legal community with more daily press or riddled with more questions than answers. But younger lawyers view the development of AI with excitement and as an opportunity for growth. After all, lawyers are problem solvers and the challenge of embracing something new in order to survive must be more compelling than fear. All of us – whatever our age – must accept the reality that we embrace AI or get left behind.

Our New Reality

We naturally seek comfort in imagination through the movies, and AI in movies and television has always been fascinating. From Hal in 2001 Space Odyssey to the T1000 in Terminator 2 to Ava in Ex Machina – the role of computers and AI has always been part scary "sci-fi" and part fantasy of "humans always prevail." The current landscape of AI and the Law requires lawyers to learn faster, accept willingly, and harness the power of AI in a way that strategically taps into the power of AI while at the same time tampering the dangers. There will be no happy ending otherwise.

But from the perspective of the more experienced lawyer, the onset of AI is forcing us to learn a whole new language, be introduced to all new tools, and grasp all of the new layers of risk that differ in just about every scenario – it is scary and uncomfortable.

AI Lexicon

As a fundamental matter, it is important to understand the difference between simple AI and generative AI. Earlier forms of AI, such as Simple AI focused on analyzing historical data and making future numeric predictions. But Generative AI, which is the form of AI most commonly used today, allows computers to produce brand new outputs that are based on learned patterns, sometimes indistinguishable from human-generated content. That is the new world, and lawyers must learn the new language of this new world. Some of the most common terms include:

Term	Definition
Algorithm	A set of rules or instructions given to an AI, ML, or computer program to help it perform a task.
Artificial Intelligence (AI)	The simulation of human intelligence in machines that are programmed to think and learn like humans.
Autonomous Systems	Systems capable of performing tasks with high degrees of autonomy, which may include decision-making capabilities without human intervention.
Bias	An error introduced into the model due to the oversimplification of algorithms or the underrepresentation of certain segments within the training data.
Big Data	Large and complex data sets that traditional data processing software cannot manage effectively.
Chatbot	A chatbot is a software application that is designed to imitate human conversation through text or voice commands.
Computer Vision	A field of AI that enables computers and systems to derive meaningful information from digital images, videos, and other visual inputs.
Continuous Active Learning (CAL)	An extension of active learning where the model continuously learns and updates its understanding based on new data or feedback.
Data Mining	Data mining is the process of sorting through large sets of data to identify patterns that can improve models or solve problems.
Deep Learning	A subset of machine learning that uses neural networks with many layers (deep neural networks) to analyze large volumes of data. Instead of relying on an algorithm that can only perform one specific task, this subset of machine learning can learn from unstructured data without supervision.
Ethics in AI	The branch of ethics that examines the moral issues related to AI and its applications, including concerns about privacy, bias, accountability, and the impact on society.

Term	Definition
Emergent behavior	Emergent behavior, also called, emergence, is when an AI system shows unpredictable or unintended capabilities.
Image Generation Tools (IGT)	AI-powered tools that create visual images based on textual or other inputs, leveraging deep learning techniques.
Large Language Models (LLM)	AI models that understand and generate human language by analyzing vast amounts of text data.
Machine Learning (ML)	A subset of AI that involves the development of algorithms that can learn and make predictions or decisions based on data.
Natural Language Processing (NLP)	The ability of a computer program to understand, interpret, and generate human language.
Neural Networks	Computing systems vaguely inspired by the biological neural networks that constitute animal brains, capable of learning tasks by considering examples.
Predictive Analytics	The use of data, statistical algorithms, and machine learning techniques to identify the likelihood of future outcomes based on historical data.
Reinforcement Learning	An area of machine learning concerned with how software agents ought to take actions in an environment in order to maximize some notion of cumulative reward.
Simple Active Learning (SAL)	A machine learning approach where the algorithm iteratively queries the user to label the most informative data points.
Supervised Learning	A type of machine learning where the model is trained on a labeled dataset, meaning that each training example is paired with an output label.
Technology Assisted Review (TAR)	The use of machine learning and other technologies to aid in the process of reviewing documents, often used in legal discovery.

Term	Definition
Unsupervised Learning	A type of machine learning where the model is trained on unlabeled data without any guidance on what the outcomes should be.

New AI World Tools

Legal practitioners should understand the most common AI tools - used in both non-business and business settings as well – whether they are everyday web services or the creation of "AI influencers" on social media. Beware: some popular "influencers" are not human and many news reports and online videos are not real or factual. The misuse of AI in the social context can help us to understand its risks in the legal setting.

Up-to-date knowledge of non-business uses is essential to understanding how AI is integrated into our world, even without our knowledge. Some high volume uses include:

Google Cloud AI: Offers a wide range of AI services that cater to different needs, including AI building blocks for vision, language, conversation, and structured data.

Amazon Web Services (AWS) AI: Provides a comprehensive suite of machine learning services and supporting cloud infrastructure, making AI more accessible to developers.

Microsoft Azure AI: Features a robust set of AI services, including Azure Cognitive Services for vision, speech, language, and decision capabilities.

IBM Watson: Known for its natural language processing and understanding capabilities, Watson is used across various sectors for insights and analysis.

OpenAI: With GPT (Generative Pre-trained Transformer) models like ChatGPT, OpenAI has become prominent in generating human-like text, making it applicable in numerous fields.

Grammarly: An application that is often used as an "add-on" to other writing applications. It reviews spelling, grammar, punctuation, clarity, engagement and delivery mistakes in English texts, detects plagiarism, and suggests replacements for identified errors.

Perhaps most importantly, lawyers must understand the current AI tools used in the practice of law. It has been years since early-generation, simple AI was first used for document review, but additional platforms have been created and others have evolved in their uses and adaptations to new legal needs. Current legal platforms include:

LexisNexis

- **Year Created:** The electronic database was launched in 1973, with continuous evolution and integration of AI technologies in recent years.
- **Description:** LexisNexis offers a wide range of legal research and analytics tools that utilize AI to help legal professionals with case law research, litigation analysis, and prediction of legal outcomes.

Westlaw Edge

- **Year Created:** Westlaw was introduced in 1975, with Westlaw Edge launching in 2018.
- **Description:** This platform provides legal research and analytics, including predictive tools about case outcomes, litigation analytics, and a comprehensive legal database enhanced with AI.

Kira Systems

- **Year Created:** 2011
- **Description:** Kira is an advanced machine learning software that helps organizations extract relevant information from contracts and other documents. It is widely used in due diligence, contract analysis, and compliance checks.

Casetext

- **Year Created:** 2013
- **Description:** Casetext uses AI to offer legal research tools that help lawyers quickly find relevant cases and statutes. Its CoCounsel product delivers AI-powered legal analysis, helping attorneys draft pleadings and memos more efficiently.

LegalSifter

- **Year Created:** 2013
- **Description:** LegalSifter combines AI with legal expertise to offer a contract review tool that helps users negotiate and understand contracts faster by identifying key legal points that need attention.

Luminance

- **Year Created:** 2015
- **Description:** Luminance provides AI-powered document review and analysis for due diligence, compliance, and e-discovery. It is designed to improve the efficiency of legal document handling for law firms and corporate legal departments.

Blue J Legal

- **Year Created:** 2015
- **Description:** This platform uses machine learning to predict legal outcomes with a focus on tax and employment law. It helps lawyers and businesses anticipate how courts might rule on their particular circumstances.

Eve

- **Year Created:** 2020
- **Description:** Eve is a generative AI case assistant that optimizes your case work, from intake to resolution. It has numerous functions that streamline legal processes including case intake, case evaluation and investigation, legal research, negotiation and demands, as well as taking on rote tasks such as drafting/propounding discovery and deposition preparation and analysis.

Uses of AI in Litigation: Pros and Cons

Early use of AI in litigation centered on basic legal research and use in document review and E-discovery. The use of Technology Assisted Review (TAR) in discovery has served to increase speed and accuracy of document reviews for responsiveness, free up human time and reduce hard and fee-based costs. The use options include both basic Simple Active Learning (SAL), which is a machine learning approach where the algorithm iteratively queries the user to label the most informative data points; and more complex Continuous Active Learning (CAL), which is an extension of simple active learning where the model continuously learns and updates its understanding based on new data or feedback. This is where things get uncomfortable for experienced lawyers.

Once OpenAI introduced ChatGPT in late 2022, an avalanche of opportunities and parallel concerns was unleashed. Simple AI became Generative AI and the uses for AI evolved from basic function to creation, problem solving, artificial judgments and "deep fakes." Setting aside the Hollywood-infused fear that "machines will take over the world," there are legitimate concerns that lawyers need to consider, both for use in their law practice and in advising clients who are considering implementing AI into their business.

Spotty Accuracy and Reliability: AI in its current iteration is not foolproof. There is a margin for error that differs according to use. The discussion below of recent cases illustrates the impact of AI errors. There have also been a number of studies examining the potential for errors in AI.

For example, a January 2024 study by Stanford RegLab and Institute for Human-Centered Artificial Intelligence reported that AI "hallucinated" (*i.e.*, produced text with incorrect information) 69-88% of the time when answering legal questions. Questions were posed to OpenAI's ChatGPT 3.5, Meta's Llama 2, and Google's PALM2, and the AI models would often generate information that was factually incorrect, inconsistent, or entirely fabricated.

The Stanford study categorized hallucinations encountered by AGI systems into three main types, helping us understand the nature of inaccuracies generated by AI:

- **Conflict in Intrinsic Knowledge of Models**: This type occurs when an AI's internal knowledge contradicts the correct information, leading to outputs that are factually wrong.

- **Factual Conflict in Information Forgetting and Updating:** This happens when an AI forgets previously learned factual information or fails to update its knowledge base with new, accurate data.

- **Conflict in Multimodal Fusion:** Involves inaccuracies arising when an AI tries to integrate information from different sources, such as text, images, and audio, leading to confused or incorrect outputs.

The key takeaways from the Stanford Study are concerning, yet support our human presumption and hope that computers cannot, yet, replace human reasoning or judgment. The rate of hallucinations was highest when it came to assessing the precedential relationships between cases (75%). Secondary findings underscored that the amount and timing of the "database" affects the accuracy of AI in legal questions. Hallucinations were more frequent with case law from lower courts compared to higher courts, and less frequent with prominent Supreme Court cases. This difference is likely due to the frequency of citation and larger discussions regarding more high profile cases. There was, however, a higher rate of hallucinations with the oldest Supreme Court cases and the newest Supreme Court cases. This lag time on legal doctrine is a major vulnerability.

Despite significant advancements in AI, such as the development of sophisticated models like GPT-4, LLaMA, and LLaVA, *hallucination* remains a major hurdle to achieving reliable and trustworthy AI systems. How do we address this significant risk?

- **Solution:** As long as hallucinations remain an issue, it will be imperative to use manual quality controls. During this phase of improving the accuracy and reliability of AI, the time saved using AI may be marginal because, while it certainly provides initial time savings, accuracy checks could require a significant amount of time to double-check and quality control the work product. In confronting the challenge of hallucinations in AI systems, a comprehensive approach is necessary. It begins with meticulous attention to data quality, ensuring datasets are diverse, representative, accurate, and free from biases to prevent reinforcement or generation of misleading information. Robust model training methodologies, including adversarial training and regularization, are indispensable for enhancing model resilience against hallucination. Ongoing research efforts aimed at understanding the root causes of hallucination and developing novel mitigation strategies are vital for advancing AI technology towards greater reliability and trustworthiness.

Lack of transparency: how can legal practitioners, the courts or opposing counsel verify that use of AI (e.g., in a document review) was accurate and comprehensive?

- **Solution**: For document reviews, law firms and courts should work toward adopting objective standards or quality control procedures to ensure reliability and discourage gamesmanship. For example, guidelines for use of predicative coding and accepted machine learning tools to review documents can be codified and then verified after the fact. Robust quality controls that involve several manual reviews of pre-coded documents to ensure that the coding is consistent and accurate could be useful. Continual audits of the quality control review, with tweaks to the process as necessary to ensure the machine learning is consistent, can lead to a verifiable "confidence" score. There are several objective measures during this process that help make AI-driven document reviews demonstrable and defensible.

Function vs. problem solving: where does AI end and the use of human judgment begin? How can young lawyers learn to critically think about issues and craft arguments if they rely on a machine to do it?

- **Solution**: Navigating the boundary between AI-driven functions and human judgment is indeed a critical aspect of legal practice for young lawyers. While AI excels at performing repetitive tasks and analyzing vast amounts of data, the essence of legal practice often lies in problem-solving and exercising nuanced judgment. Young lawyers can cultivate their critical thinking skills and argumentative prowess by viewing AI as a complementary tool rather than a replacement for human intellect. AI can aid in gathering information, identifying patterns, and even suggesting potential arguments, but it is the lawyer's responsibility to interpret this data, apply legal principles, and craft persuasive arguments. Emphasizing experiential learning, mentorship programs, and engaging in complex legal scenarios where AI's role is supportive rather than dominant can help young lawyers hone their critical thinking abilities. Dialogue between Partners and Associates on AI issues is imperative. Additionally, fostering a culture of continuous learning and reflection within law firms can encourage young lawyers to interrogate AI-generated outputs, challenge assumptions, and refine their analytical and advocacy skills.

Ethical Issues: what are the ethical implications of holding out work product as your own despite use of things created by a machine? Only humans have a conscience, machines do not.

- **Solution:** The ethical implications of presenting work product as one's own when it incorporates elements created by AI are multifaceted. While machines lack conscience or moral agency, the responsibility for transparency and integrity in legal practice ALWAYS rests with humans. Clients have the right to know the sources and methodologies behind the legal advice they receive, and withholding information about AI involvement may undermine transparency in the attorney-client relationship. Moreover, misrepresenting AI-generated outputs as solely the work of human attorneys

could potentially mislead clients about the capabilities, limitations, and risks associated with AI technology in legal practice. Also, the use of AI work product that mimics human thought processes in cases involving human interests presents ethical implications that are complex and require careful consideration. While AI systems can simulate human-like reasoning and decision-making, they lack human consciousness, empathy, and moral agency. To address these ethical concerns, legal professionals should adopt clear policies and guidelines regarding the use of AI tools, including disclosure requirements when AI contributes to work product.

Built-In Bias: Garbage in, garbage out, right? Simple and generative AI are based in large part on data that is either input or captured. The data can be skewed or biased in a number of ways depending upon the original source material. Use of biased data will result in biased AI "creations" or content.

- **Solution**: Absolutely, the adage "garbage in, garbage out" holds true in the realm of AI, particularly when it comes to bias in data. Simple and generative AI models heavily rely on the datasets they are trained on, and if these datasets are skewed or biased (which most are), the AI's outputs will reflect those biases. This phenomenon is especially concerning in legal contexts, where fairness, impartiality, and justice are paramount. Biases in data can originate from various sources, including historical inequalities, societal prejudices, or systematic discrimination present in the original source material. For instance, if legal datasets used to train AI models disproportionately represent certain demographics or exhibit patterns of systemic bias, the AI's outputs may perpetuate or amplify these biases, potentially leading to unjust outcomes or reinforcing existing inequalities within the legal system. To mitigate the risk of built-in bias in AI-generated content, legal professionals – and society— must demand diligence in the selection and curation of training datasets, ensuring they are diverse, representative, and free from systemic biases. Additionally, implementing bias detection can help identify and address potential biases in AI output.

Privacy and Security Concerns: How do we protect data that are confidential, either firm information or client information?

- **Solution**: Protecting confidential data, whether firm or client information, is paramount and indeed considered creed, in the legal profession. To safeguard confidentiality, law firms must implement robust privacy and security measures, including compliance with relevant regulations such as the General Data Protection Regulation (GDPR) in Europe and the Health Insurance Portability and Accountability Act (HIPAA) in the United States. These regulations dictate strict requirements for data handling, including encryption of sensitive data, strict access controls, and adherence to principles of data minimization and purpose limitation. Additionally, cybersecurity concerns reach much farther than AI uses. Investing in cybersecurity tools, conducting regular security audits, and providing employee training on data privacy best practices are essential steps to mitigate risks and ensure data protection, irrespective of AI. When

utilizing AI technologies, thorough due diligence on AI systems and vendors is necessary to ensure compliance with privacy standards and maintain data confidentiality. Legal practitioners must put a premium on ensuring high levels of diligence by AI vendors to effectively protect their clients' confidential information.

Liability: when AI-generated mistakes are made, who is responsible? Who pays?

- **Solution**: Determining liability when AI-generated mistakes occur is a complex issue that requires careful consideration of legal and ethical principles within particular contexts. While AI systems can make errors, responsibility ultimately rests with the individuals or organizations involved in their design, use, and oversight. Legal liability may fall on various parties depending on factors such as the nature of the mistake, the factual setting in which AI is used, the applicable laws and regulations, and the contractual agreements in place. In cases where AI systems are used by legal professionals, the responsibility for ensuring the accuracy and reliability of AI-generated outputs typically lies with the human users who employ the technology. Legal practitioners may be held accountable for errors resulting from their reliance on AI-generated work product, particularly if they fail to exercise due diligence or independent judgment in evaluating and verifying the AI's outputs –as exemplified by the now well-known case, *Mata v. Avianca*, where a judge imposed sanctions on two New York lawyers who submitted a legal brief that included fictitious case citations generated by the AI chatbot, ChatGPT. However, liability may also extend to AI developers, vendors, or other parties involved in the creation or deployment of the AI system, especially if issues arise due to defects in the AI's design, inadequate training data, or failure to implement appropriate safeguards.

Law Firm Growing Pains

Some law firms have jumped into the deep ocean of AI usage without proverbial life vests. Of these firms is a small plaintiff's law firm, Frontier Law Center, which specializes in California employment law. According to Jay Madheswaran (Eve's CEO) and Manny Starr (Frontier Law Center's managing partner), Eve's AI technology is far more specific and proprietary than the likes of ChatGPT or even cloud-based template software like Clio. Instead, Eve is a tool trained by lawyers themselves on the basics of practices like personal injury or employment law, and then adapts even further as firms input their case information into the software. Starr says that he uses Eve to draft documents and even develop strategic playbooks. Because of Eve's ability to cut down the time it takes to complete routine legal tasks, Starr says his firm is able to take on a higher volume and different kinds of cases than they could normally take on. (Law360 Pulse, AI Assistant Offers "Second Brain To Small Plaintiffs Firms", April 5, 2024).

But has AI been adopted wholesale by the legal community? A February 13, 2024 Lighthouse Survey says "not so much." Almost 300 legal entities were surveyed – 56% were law firms and 44% were in-house corporations counsel. Approximately 43% of respondents said they are currently evaluating AI uses, but only 20% of respondents reported actual use of AI. Although

the majority of users were comfortable with e-discovery use of AI, the comfort level ended there. And perhaps wisely so – the obstacles cited were legal implications of errors and data privacy (70%), and very low trust in accuracy for use in legal writing (40%) (Wang, Feng. "Lighthouse: A Survey of AGI hallucination." arXiv preprint arXiv:2401.06792, 2024). A recent study published just last month suggests these concerns are persistent.

In April 2024, Law360 Pulse published the results of a survey entitled: "AI Survey: Where Artificial Intelligence Stands in the Legal Industry." The survey of 384 law firm lawyers between December 2023 - February 2024, revealed that only a small percentage of respondents were ready to fully inboard AI use. But more than 1/3 are working with at least one AI provider (ChatGPT4 and Relativity being most common). More than 1/3 reported that their firm is interested in AI, but approaching with caution. Almost half of respondents weighed pros and cons equally, but the vast majority are most concerns with inaccuracy and ethical implications. And perhaps most interestingly, the survey found that only a very small percentage (14%) said that clients expected their firm to use AI.

How Courts Are Addressing AI

AI usage in the courts and criminal justice system continues to grow and proliferate. Judges are more frequently encountering legal issues with AI, and several courts have issued opinions raising concerns or imposing constraints on attorneys' use of AI. Further, "deep fakes" and AI are creating daunting challenges for the authentication and use of evidence in court.

Recent Case Decisions

1) ***Mata v. Avianca*** **(2023)**

- **Background Facts:**
  - Two New York attorneys, Steven A. Schwartz and Peter LoDuca, submitted a legal brief containing fictitious case citations generated by the artificial intelligence chatbot, **ChatGPT.** The brief was prepared for a civil personal injury lawsuit against the airline Avianca. After the opposing counsel and the court were unable to locate some of the cases cited in the brief, it was revealed that the citations were entirely fabricated by the AI tool. The attorneys initially stood by the fake opinions even after their authenticity was questioned.
- **Court's Decision**:
  - U.S. District Judge P. Kevin Castel ordered sanctions for Schwartz and LoDuca ordering them to pay a total fine of $5,000. The sanctions were imposed under Rule 11, serving as a deterrent to prevent similar misconduct in the future. Judge Castel emphasized that while using AI for assistance is not inherently improper; attorneys have a gatekeeping role to ensure the accuracy of their filings. The case underscores the ethical and practical considerations for attorneys using generative AI tools and the importance of verifying the information these tools provide.

2) ***Oracle America, Inc. v. Google LLC*** **(2021)**

- **Background Facts**: The case revolved around Google's use of Java APIs in its Android operating system, with Oracle claiming copyright infringement. The outcome has broad implications for software development, including AI.
- **Court's Decision**: The Supreme Court ruled in favor of Google, stating that its use of Java APIs was fair use under copyright law, a significant ruling for the development of AI and software more broadly.

3) ***State v. Loomis*** **(2016)**

- **Background Facts:** Eric Loomis was sentenced to five criminal counts related to a drive-by shooting. His sentencing was based in part on a risk assessment generated by an AI algorithm. Loomis challenged the use of the AI-generated score, arguing it was not transparent and violated his due process rights.
- **Court's Decision:** The Wisconsin Supreme Court ruled that the risk assessment could be considered in sentencing but not as the sole factor. This decision highlighted concerns about transparency and fairness in AI-driven decision-making processes.

4) ***United States v. Microsoft Corp.*** **(Data Privacy and AI)(2018)**

- **Background Facts**: The case involved a dispute over whether a U.S. government warrant could compel Microsoft to hand over emails stored on servers in Ireland, touching on data privacy issues relevant to AI.
- **Court's Decision:** The Supreme Court found the case moot after the passage of the CLOUD Act, which addresses law enforcement's access to electronic data stored internationally, underscoring the importance of data privacy in the context of AI.

5) ***HiQ Labs, Inc. v. LinkedIn Corp.*** **(2019)**

- **Background Facts**: HiQ Labs scraped publicly available LinkedIn data for its AI algorithms, leading to a legal battle over data access and privacy rights.
- **Court's Decision**: The Ninth Circuit ruled in favor of HiQ Labs, allowing the continued scraping of LinkedIn's public data, a decision that impacts how data is used for AI training and analysis.

6) ***Capitol Records, LLC v. ReDigi Inc.*** **(2013)**

- **Background Facts:** The case challenged ReDigi's marketplace for reselling legally purchased digital music files, raising questions about digital rights and the resale of digital products, including AI-generated content.
- **Court's Decision:** The court ruled against ReDigi, finding its service constituted copyright infringement, which affects the handling of digital and potentially AI-generated works under copyright law.

7) ***Thaler v. Hirshfeld* (*Thaler v. Iancu*) (2021)**

- **Background Facts:** Stephen Thaler's patent applications listed an AI system, DABUS, as the inventor, challenging the USPTO's requirement that inventors must be human.
- **Court's Decision:** The Federal Circuit upheld the USPTO's decision, affirming that under U.S. patent law, an inventor must be a natural person, a significant ruling for AI and intellectual property law.

8) ***American Civil Liberties Union (ACLU) v. Clearview AI* (2012) (Settlement)**

- **Background Facts:** The ACLU sued Clearview AI for collecting billions of facial images without consent, violating privacy laws and raising significant concerns about AI and personal data use.
- **Court's Decision:** Clearview AI settled, agreeing not to sell its facial recognition database to most U.S. companies, highlighting the privacy and ethical challenges posed by AI technologies.

Recent Pending Cases

1. ***Mobley v. Workday, Inc.***
   - **Date Commenced:** 2023
   - **Background:** Derek Mobley initiated a class action lawsuit against the HR software provider Workday, alleging its AI-powered hiring tool discriminates based on race, age, and disability.
   - **Legal Questions:** This case poses questions about the liability of AI product vendors for biased results.
   - **Significance:** It is an early instance in the legal discourse on AI vendor liability for discrimination, setting a precedent for future cases.

2. ***Estate of Gene. B. Lokken v. UnitedHealth Group, Inc.***
   - **Date Commenced:** 2023
   - **Background:** The estates of Gene B. Lokken and Dale Henry Tetzloff filed a class action against UnitedHealth Group Inc., claiming the company's AI model, naviHealth predict, inappropriately denied care by overriding physician recommendations.
   - **Legal Questions:** The lawsuit challenges the accountability of companies for AI's erroneous decisions in healthcare coverage.
   - **Significance:** This could be a landmark case in defining AI system liability in healthcare decision-making.

3. ***Huskey v. State Farm Fire & Cas. Co.***
   - **Date Commenced:** 2022

- **Background:** Illinois residents Jacqueline Huskey and Riian Wynn allege State Farm's automated claims review process, suspected to use AI, discriminates against Black homeowners, infringing the Fair Housing Act.
- **Legal Questions:** The suit examines whether FHA disparate impact liability extends to insurers employing potentially biased AI algorithms.
- **Significance:** The continuation of this case after attempts to dismiss it underscores persistent concerns regarding AI-driven discrimination in the insurance sector.

4. Authors Guild et al. v. Open AI Inc. et al.

- **Date Commenced:** 2022
- **Background:** John Grisham and other authors filed lawsuits against tech giants like OpenAI and Microsoft, accusing them of copyright infringement by using their works to train AI models without authorization.
- **Legal Questions:** These lawsuits bring up novel legal issues regarding copyright infringement and the legality of AI models being trained on copyrighted works.
- **Significance:** The outcomes of these lawsuits could create important legal precedents for AI development, potentially necessitating permissions for training data.

The number of cases addressing various aspects of AI over the last few years underscores its importance as well as the uncertainties facing the legal arena. Lawyers must navigate the risks and benefits of AI in the practice of law, but also need to understand the challenges faced by our clients in the business context. Studies show variable rates of interest and adoption by corporations, and the risks and benefits are likely unique to each company. What can we do to advise our clients how best to proceed?

Use of AI in Business

Although the Law360 Pulse Survey indicates that few clients expect their outside firms to use AI, other data suggests that the majority of businesses (our clients) are actively looking into and implementing AI into their businesses. So in addition to understanding and optimizing AI for outside counsel use, it is imperative that we equip ourselves to properly advise our clients on the benefits, risks, and best implementation practices for AI use in their businesses. The survey data indicates variable current use of AI in business, but a high degree of interest and desire for guidance in the field.

One recent survey of leading North American information technology (or "IT") companies and business leaders found that 77% of respondents were using generative AI to improve their internal process efficiency and IT operations. (Gerson Lehrman Group, Navigating the Landscape of Generative AI: A GLG Survey Reveals Enthusiasm, Concerns, and Areas of Focus, October 22, 2023). Most respondents reported that they are rapidly adopting pilot programs to improve efficiency and customer experience, and their greatest concerns relate to protecting their intellectual property and customer data.

But the scope of potential AI uses are far broader and range from uses intended to streamline processes, increase productivity, lower costs, and enhance customer service. Here are some of the most common and popular business uses at this point:

(1) AI tools help companies optimize cloud pricing and spending by identifying cloud usage patterns for better cost predictions, identifying anomalies & opportunities for saving.

(2) ChatBots and voice assistants for customer support and IT support. Saves on human costs.

(3) Companies that rely on Webservers and E-commerce use AI to constantly scan systems, networks, and processes for inefficiencies, potential disruptions, threats, etc.

(4) Predictive maintenance – AI monitoring of data from machines (jets, sewer lines) for maintenance needs.

(5) Customer service

(6) Personalization – utilizes customer data, engagement, language, interests to tailor ads, reminders, suggested restocking or renewals. Spotify, Amazon, YouTube.

(7) AIOP platforms – IT operations done by AI.
- Intelligent alerts
- Root cause analyses
- Anomaly and threat detection
- Incident automatic remediation
- Capacity optimization

(8) Process Automation – Automates time-consuming and repetitive processes that can be prone to human error. Frees up human employees for more complex work.

- Example: J&J uses RPA combined with ML, AI and task mining to identify and automate routine processes across departments
- Data analyses
- GenOS platform by Intuit – financial, large language models that do taxes, accounting, cash flow.

(9) Financial reporting and analyses

(10) Recruiting & Hiring –

- Amazon uses to screen resumes, match candidates to roles, etc.
- Pyrometrics online platform is used to assess candidates with video software that analyses body language, facial expressions, word choices during interviews.

(11) Safety and quality control to detect anomalies in safety systems.

(12) Workforce schedules – AI is effectively used to develop workforce schedules to take into account employee information that enhances efficiency and output.

Counseling Our Clients

One of the most uncomfortable aspects of the new AI world for outside lawyers is the realization that our learning curve is not as ahead of our client's learning curve as is usually the case. However, we must push to stay ahead so that we continue to serve as trusted advisors. Some key things to remember are, despite the newness and moving stream of AI advancements, going back to the fundamentals will always be of benefit. None of these concepts are new:

Know the capabilities and limitations of AI

Many firms are creating practice groups focused on AI. Similar to or outgrowths of practice groups based on E-discovery expertise. Being able to offer clients top-to-bottom resources for AI counseling and implementation should be put on the front burner. Developing an AI strategy must be tailored to client business needs and then marrying those needs to available platforms and tools (not the other way around).

Identify your client goals

First discuss with your client their objectives and in what space they need to improve efficiency, output, or management processes. Often times, it is most advisable for the company to implement AI only in particular aspects of the company. Phased implementation can reduce risk. Johnson & Johnson is following a phased implementation approach, but in an aggressive way – investing money, time, and talent to explore and onboard AI into the healthcare business in an ethical way. They are a great example of client innovation that is leading the way.

Assess AI readiness of the company

Blind adoption of anything is never a good idea. The client must have the appropriate infrastructure, hardware, software, and staff necessary for a particular AI implementation. The company must have AI talent and a framework for sustainability. AI technique, skills, and good data engineering abilities are a must and, therefore, upfront investment will be necessary. They must also be in a position to harness outcomes and evolve over time.

Start with selected tasks and specific processes

As noted above, history tells that large-scale or wholesale adoption of new technology or processes can be fraught with error that becomes exponential. A layered approach is best, focusing on the most urgent needs and most suitable platforms. Baby steps to some extent, but with deliberation and focus.

Learn from mistakes and evolve

So we go back to a fundamental tenet of life – always learn from our mistakes and implement changes to avoid those same mistakes in the future. This must go beyond just the experience of the client however. There are new articles and news stories published every day about AI – read them. Learn and adapt. The secret to life in the new AI world.